HIGH COURT OF JAMMU & KASHMIR AT JAMMU.

CIMA NO.27/2004
CROSS APPEAL NO.52/2004

Date of decision:31.08.2007

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1. Union of India & ors. *Vs.* *Dr.Ashok Manchanda*
2.Dr.Ashok Manchanda *Vs.* *Union of India and Ors.*

Coram:

MR.JUSTICE J.P.SINGH, JUDGE

Appearing Counsel:

For Appellant(s) : Mr. Ajay Sharma, CGSC.

For Respondent(s) : Mr. K.K.Abrol, Advocate.

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i) Whether approved for reporting in Press/Journal/Media : **Yes/No**

ii) Whether to be reported in Digest/Journal : **Yes/No**

Motor Accidents Claims Tribunal, Jammu made an award on 24-10-2003 awarding an amount of Rs.10,30,480/- along with interest @ 9% per annum in favour of Dr.Ashok Manchanda and against Union of India and Ors.

Aggrieved by the award of the Tribunal, both Union of India and the claimant, Dr.Ashok Manchanda, have appealed against the award.

Union of India's appeal stands registered as CIMA No.27/2004 whereas Cross Appeal of claimant-Dr.Ashok Manchanda is registered as No. 52/2004.

FACTS:-

Dr. Ashok Manchanda was traveling in his Car from R.S.Pura to Jammu on 6-08-2001 when little ahead of R.S.Pura, his vehicle was hit by B.S.F owned vehicle driven by Sakwan Baba, Head Constable No.84102677, near Makka Morh R.S.Pura resulting in multiple injuries on his person.

Attributing the injuries received by him to the rash and negligent driving of B.S.F owned vehicle by its driver Sakwan Baba, Dr. Ashok Manchanda filed a claim petition before the Motor Accident Claims Tribunal, Jammu claiming an amount of Rs.66,32,000/-. The break up of the amount of compensation claimed by Dr. Manchanda, as given by him in his claim petition, reads thus:-

> "Amount of compensation claimed and basis thereon:-
> (a) Dental injuries:-
> (i) Due to injuries on mandible, the petitioner remains admitted in the Hospital and four majors operation was done. Due to fracture left lower 3rd moles which has caused permanent loss, removal of upper left molar 2nd,

permanent loss. Due to these injuries the petitioner has to remains on liquid and semi liquid food. He cannot speak properly and chew the hard food till today and in future also. These injuries has caused permanent disablement. Rs.8,00,000.00

(ii) Pain, agony and suffering caused due to accident. Rs.2,00,000.00

(iii) Due to injuries the petitioner will have to remain on liquid food and semi liquid food in future also which is highly expenses. Rs.6,00,000.00

(iv) Due to injuries on mandible and operated four times, due to it he cannot speak properly and stiching was done muscosal adhesions have taken place in his oral cavity, inability to open the mouth completely due to reoperated operations, adhesions, unable to close his mouth normally again due to decreased muscular tone of lower lip and chin, unable to appreciate normal sensation of touch, heat and cold over the chin area and lower frontal teeth. Rs.6,00,000.00

(b)Ortho-paedic injuries:-

(i) Due to injuries on rightscapule, fracture, shaft of femur right side, fracture shaft right V metatarsal bone. The petitioner can'ot walk properly. He remains confine to bed till today. These injuries has caused permanent disablement. Rs.9,00,000.00

(ii) Due to these injuries the three operations were done in the Hospital at Jammu and at Amritsar. Firstly iron rod was put in right Frmur which was later on removed and two iron plates were placed in it which has caused pain, suffering and agony caused. Rs.3,00,000.00

(iii) Due to these injuries the petitioner remains confined to bed he is unable to move from the the bed and can'ot walk independently. Due to these injuries the petitioner remains on leave from the date of accident till today and further advise to complete bed rest for further six weeks. The petitioner reserved his right to claim more compensation in case he shall

remain on leave more than the period mentioned above. Rs.1,82,000.00
(c)Expenses incurred on medicine, traveling and on special diet as advise by the doctor till today. Rs.5,00,000.00
(d) Expenses require for future treatment. Rs.6,00,000.00
(e) Due to injuries remains confined to bed. The private practice of the petitioner also suffered. He was earning Rs.10,000/- p.m from practice. Rs.6,00,000.00
(f) Expenses incurred and to be incurred on hiring the service of one person to look after in the hospital and at home till today and for future also as the petitioner is unable to move from bed. Rs.1,50,000.00
(g) Loss of ammunity of life. Rs.5,00,000.00
(h) Due to the injuries the disfigurement has been caused from the face mouth (oral cavity) and from the leg. Rs.4,00,000.00
Total **Rs.66,32,000.00"**

Union of India and its functionaries contested the claim petition inter alia denying accident by the B.S.F owned vehicle and its liability to pay the compensation amount claimed by the claimant.

The pleadings of the parties resulted in framing of following issues by the Tribunal. The issues read thus:-

"1) Whether accident took place on 6-08-2001 near Makka Morh R.S.Pura due to rash and negligent driving of the offending vehicle No. JK02C-3501 by its driver/respondent No.3 in which petitioner sustained injuries, if so of what nature?

O.P.P

2) If issue No.1 is proved in affirmative, whether petitioner is entitled to the compensation; if so of what amount and from whom? O.P.P

3) Relief. O.P.Parties"

The claimant, besides appearing as his own witness, examined Mohan Lal, Vishwanath Parmeshwar, Dr. Som Dutt Gupta, Dr. Shalinder Sharma, Dr. Ved Parkash, Dr. S.S.Padha and Mr. Sat Paul as his witnesses.

Union of India examined the driver of vehicle No.JK02C-2501 and its co-driver as its witnesses.

After evaluating the evidence led by the parties the Tribunal came to the conclusion that the claimant had proved that the accident had been caused by rash and negligent driving of B.S.F owned vehicle No.JK02C-3501 by its driver, Sakwan Baba. It further found that the claimant had established a case for award of compensation to him for the injuries which he had received in the accident.

Deciding issue Nos. 1 and 2 in favour of the claimant, the Tribunal awarded an amount of Rs.10,30,480/- as compensation to the claimant, Dr.

Manchanda, payable by Union of India. The break up of the compensation awarded is as follows:-

"1) Medical expenses	:Rs.3,21,500/-
2) For conveyance	:Rs. 70,000/-
3) For gratuitous service and on attendant	:Rs. 50,000/-
4) For special diet	:Rs. 25,000/-
5) For leave encashment	:Rs. 01,26,780/-
6) For future operation	:Rs. 01,00,000/-
7) For prospective economic loss	:Rs.1,87,200/-
8) Pain and suffering	:Rs. 75,000/-
9) Loss of amenities of life	:Rs. 75,000/-
Total	:**Rs.10,30,480**/-

Whereas claimant-Dr. Ashok Manchanda seeks enhancement in the amount of compensation, Union of India seeks reduction of the amount of compensation awarded by the Tribunal, saying that the amount of compensation awarded by the Tribunal was both unjustified and excessive.

When confronted with the overwhelming evidence produced by the claimant, proving receipt of multiple injuries all over his body, resulting in his permanent disability to the extent of 40%, learned counsel for Union of India, Mr. Ajay

Sharma, restricted his challenge to the award only against the items which read thus:-

"1)	For conveyance	: Rs. 70,000/-
2)	For gratuitous service and on attendant	: Rs. 50,000/-
3)	For leave encashment	: Rs.1,26,780/-
4)	For future operation	: Rs.1,00,000/-
5)	For prospective economic loss	: Rs.1,87,200/- "

Mr. K.K.Abrol, learned counsel appearing for the claimant in the Cross Appeal, submitted that the claimant's claim for other kinds of leave obtained by him during his hospitalization had not been taken into account by the Tribunal while granting compensation under the head Leave Encashment. He submits that compensation awarded against other heads too was on the lower side which was required to be raised.

I have considered the submissions of learned counsel for the parties and would deal with the issues raised at the time of consideration of the appeal and cross-appeal as follows:

While awarding an amount of Rs.70,000/- as compensation on account of Conveyance Charges

spent by the claimant, the Tribunal had held as follows:-

> "The petitioner has further claimed compensation for transportation from one place to another in connection with his treatment. He has deposed that he got treatment at Amritsar and went there in connection with his follow up treatment seven times in private taxi which charged Rs.3000/- per visit. He also went to Batra Hospital, Delhi by train. He has placed on the record the railway tickets and the taxi fare bills of Rs.15020/- and Rs.45100/- amounting to rs.60120/-. The taxi fare bills have been duly proved by Parmeshwar Kumar PW and they have been exhibited from EXPWP1 to EXPWP7. The petitioner has further deposed that he used local conveyance during his stay at Batra. It is a admitted fact that the petitioner has sustained injuries of serious nature in the alleged accident and till today he is not in a position to travel by ordinary mode of conveyance and he requires special conveyance for the said purpose. The petitioner is under treatment since the date of accident is walking with the help of crutches. In my opinion an amount of Rs.70,000/- shall be just compensation under the head transportation charges."

Perusal of the above finding of the Tribunal indicates that the claimant had proved spending of an amount of Rs.60,120/- on Railway tickets and taxi fares *inter alia* through exhibits EXPWP1 to EXPWP7. Baring this, there was no evidence on records to prove as to how much amount in addition to Rs.60,120/- had been spent by the claimant on

taxi fares. Award of the Tribunal under this Head, over and above Rs.60,120/-, thus appears to be unjustified. Claimant is entitled only to an amount of Rs.60,120/- which had been proved to have been actually spent by him on taxi fares etc. so as to receive treatment outside the State of Jammu and Kashmir.

While awarding an amount of Rs.50,000/- on account of receiving gratuitous service and on expenses of the attendant engaged to look after the claimant so as to facilitate his movements, the Tribunal had recorded the following finding:-

> "The petitioner has further claimed compensation for keeping an attendant during the period of treatment to whom he paid Rs.2000/- per month. He met with the alleged accident on 6.8.2001 and since then he is continuously under treatment and the last operation was performed upon him in the month of May, 2003. He is walking with the help of crutches till today and as such it is not possible for him to take care of himself and still he requires constant care and attendance of others. He cannot even perform his ordinary chores of life and is dependant on others. He remained under tr4eatment in different hospitals and during this period, he was accompanied by his family members and other attendants on whose he might have spent lot of amount for which he is to be compensated. In my opinion an amount of Rs.50,000/- shall be just compensation for services rendered to

> him by attendants and other family members."

I have considered the findings of the Tribunal on this aspect of the matter.

The injuries suffered by the claimant in the motor accident have disabled him to such an extent that he is unable to even walk without the help of crutches and would need a permanent attendant who would help him out to perform his ordinary chores of life. Amount of Rs. 50,000/- under this head, when he had engaged an attendant at Rs.2000/- per month, who had been attending to his requirements for the last more than two years and was likely to attend him further because the claimant had not been able to recope from the disability caused due to the motor accident, cannot, looked from any angle, be said to be unreasonable or unjustified. Objection raised by Union of India against this item of the award is thus over-ruled.

Mr. Ajay Sharma, Learned Central Government Standing Counsel, questions the finding of the Tribunal in assessing the monthly salary of the claimant at Rs.21,130/- on the ground that the

finding was against the statement of the claimant who had admitted his salary to be Rs.20,130/-.

I have gone through the statement of the claimant and the finding of the Tribunal in this respect. The Tribunal, appears to have erred in treating the monthly salary of the claimant to be Rs.21,130/- whereas it should have been Rs.20,130/-. Calculating the loss of leave encashment, the compensation under this head would thus come to Rs.1,20,780/- as against an amount of Rs.1,26,780/- as awarded by the Tribunal. Mr. K.K.Abrol, learned counsel for the claimant has not cited any statutory provision/Leave Rule or office order in terms whereof the claimant was entitled to leave encashment over and above a period of six months. His plea, in support of the cross-appeal that he was entitled to more amount under this head, is thus without any basis. It is, accordingly, rejected.

The award of the Tribunal, therefore, deserves to be modified to the extent indicated above.

Mr. Ajay Sharma, Learned Counsel for Union of India then submitted that claim for future

treatment and operations awarded by the Tribunal was based on the evidence which had been produced by the claimant after the closure of evidence of the parties and whereafter no further opportunity was afforded to Union of India to lead its evidence to rebut the evidence which had been led by the claimant for the second time, though on permission by the Tribunal.

I have examined the finding of the Tribunal whereby it had awarded an amount of Rs. 1,00,000/- under the Head of “future treatment and operations.

While examining the respondent’s claim under the aforementioned Head, the Tribunal had relied uponthe medical certificate which had been issued by Dr. D.K.Gupta, Head of Department Ortho, Batra Hospital, Bombay, which reveals that amount of Rs. 75,000/- was required for two operations for removal of upper screw and nail. The Tribunal has further relied upon the statement of Dr. Som Dutt Gupta, who had deposed that if the mental nerve was not cured, the claimant may require surgery for decompression of the nerve and such surgery was not possible at Jammu. This Doctor had not deposed

about the amount of expenses which would be needed for such operation. The Tribunal had, however, awarded an amount of Rs. 1,00,000/- for future operations.

Although strict application of the Evidence Act may not be warranted in proceedings under the Motor Vehicles Act for determination of compensation, yet principles of natural justice are required to be followed by every Tribunal and in that view of the mater, the Tribunal could not have relied upon on the certificate of Dr. D. K. Gupta, Head of Department Ortho, Batra Hospital, Bombay, who had not been examined as a witness in the case to prove the certificate issued by him. Reliance of the Tribunal on this certificate of Dr. D.K.Gupta, thus appears to be unjustified particularly when no opportunity had been afforded to Union of India to lead its evidence in rebuttal on the fresh evidence which had been produced by the claimant in the case after both the parties had closed their evidence.

There is, however, no denying the fact that the claimant, who has suffered multiple injuries and fractures over his body and has been disabled to the

extent of 40%, his undergoing future operation(s) and treatment cannot be ruled out and likewise the amount, which may be spent by him on such operations and treatment cannot be denied to him. As the claimant has not proved the exact amount to be spent by him on future operations and treatment by producing admissible evidence, so employing some guess work and taking into consideration the expenses which may be spent on future operations and treatment for the injuries which had been suffered by the claimant, it is considered just and proper to award an amount of Rs. 45,000/- to the claimant under the aforementioned head. The award of the Tribunal shall accordingly stand modified to be an award for an amount of Rs. 45,000/- as against the amount of Rs. 1,00,000/- which had been awarded by the Tribunal for future treatment and operations.

Mr. Sharma next contended that while awarding an amount of Rs. 1,87,200/- for prospective economic loss to the claimant, the Tribunal had not affected 1/3rd deduction for his personal expenditure and the expenditure which he

would incur on the paramedical staff which is usually engaged by a Doctor who helps him in discharging his duties while doing private practice. Learned counsel refers to ***New India Insurance Company v. Charlie and anr***, reported as ***AIR 2005 SC 2157*** in support of his submission.

There is force in the argument of the learned counsel because the Tribunal has not taken into account the expenses which the Doctor would have been spending on the paramedical staff while doing his private practice. Monthly loss of income assessed by the Tribunal at Rs. 1200/- thus needs to be scaled down to Rs. 800/- because 1/3rd amount would have been spent by the claimant on paramedical staff as also on other paraphernalia. The annual loss would thus be Rs. 9600/-. When multiplied by 13, the multiplier selected by the Tribunal, the loss of income from private practice would come to Rs. 1,24,800/-.

The award of the Tribunal under this Head too thus needs to be modified to Rs. 1,24,800/- as against an amount of Rs. 1,87,200/-.

No other item of the award had been questioned by learned counsel for the appellant-Union of India and rightly so because the evidence produced by the claimant, in the absence of any evidence produced by Union of India to the contrary justifies the amounts awarded by the Tribunal.

The up shot of above discussion therefore leads to the modification of the award of the Tribunal which shall now read as under:

"1) Medical expenses :Rs. 3,21,500/-
2) For conveyance :Rs. 60,120/-
3) For gratuitous service and on attendant :Rs. 50,000/-
4) For special diet :Rs. 25,000/-
5) For leave encashment :Rs. 01,26,780/-
6) For future operation :Rs. 45,000/-
7) For prospective economic loss :Rs. 1,24,800/-
8) Pain and suffering :Rs. 75,000/-
9) Loss of amenities of life :Rs. 75,000/-

Total :**Rs.9,03,200**/-

Learned counsel for the claimant-respondent did not put forward any sustainable plea as to how the compensation awarded to the claimant was on the lower side. I therefore do not find any force in

the cross appeal of the claimant, which is accordingly rejected.

While allowing the appeal of Union of India to the extent indicated above, the award of the Tribunal is accordingly modified to be an award for an amount of Rs. 9,03,200/- alongwith interest@ 9% per annum from the date of filing of the claim petition till its realization. Interest shall not, however, be payable on the amounts awarded for future treatment and operations and prospective economic loss.

Registrar Judicial is accordingly directed to release the amount awarded to the claimant, in terms of this judgment alongwith interest accrued thereon, minus the amount already received by him during the pendency of the litigation. Remaining amount, if any, shall be returned to Union of India through an Officer authorized by it in this behalf to receive the payment.

(J.P.Singh)
Judge

Jammu
31.08.2007
Anil Raina, PS